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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 166

ROBERT JOHN GROCHOWIAK

Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,

Appellee

REPLY BRIEF

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This Reply brief will serve to clarify certain points raised by Appellee in its Motion to Dismiss.

I

The First Amendment provides, "Congress shall make *no law* . . . . abridging the freedom of speech, or of the press . . ." No distinction is made between laws totally prohibiting free expression and those simply limiting the area, time or place of free expression. The constitutional prohibition is total and explicit, and must override the equally total and explicit prohibition against free expression for one day in seven. No leeway is given for the setting aside of the First Amendment guaranty of freedom of expression. The Fourteenth Amendment made said provision applicable to the Pennsylvania Statute here under review.

Wholly independent of the questions concerning religion, discrimination and unequal enforcement herein-

after referred to, this Court has never considered the important question whether freedom of speech or of the press may be the subject of an arbitrary absolute or partial prohibition for a specified period of time.

II

Contrary to the Appellee's argument the unrefuted evidence and the precise language of Section 2 and Section 6.1 point unequivocally to the religious nature of the Act here in question. No "Sunday Law" has been reviewed by this Court since the Fourteenth Amendment was construed to make all the guarantees of the First Amendment applicable to the states. Civil rights are not lost by historical default and error compounded by error remains nonetheless error.

III

Perfection in the enforcement of the statute in question is not sought. The unconstitutional discrimination lies in the failure to make an *effort* to enforce the Act as to others "exhibiting motion pictures" on Sunday.

IV

The court below found the motion pictures exhibited were not obscene, offensive to good morals or had any effect on the peace and good order of the community. (Appendix B, pages 65, 66) The record is barren of evidence pointing to adverse effects upon public health, safety, morals or welfare.

Respectfully submitted,

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